

In the matter of:)
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)
American Federation of State,)
County and Municipal Employees,))
)
Complainant/Petitioner,))
)
v.) SHELRB ULP Case Nos. 2001-02,
) 2001-03, 2002-01 and
Salisbury University,) Elec. Case No. 2002-04
) Opinion No. 3
Respondent/Employer,)
)
and)
)
Maryland Classified Employees)
Association,)
)
Intervenor.)
)

On April 4, 2002, the State Higher Education Labor Relations Board (SHELRB) delegated Unfair Labor Practice (ULP) Case No. 2001-03 (American Federation of State, County and Municipal Employees (AFSCME) (on behalf of Donald Pryor) v. Salisbury University (SU)) to the Office of Administrative Hearings (OAH) to make findings of fact and proposed conclusions of law. On May 10, 2002, the Board delegated to OAH three related cases filed by AFSCME against SU: SHELRB ULP Case No. 2001-02 (Shared Governance), ULP Case No. 2002-01 (Unlawful Assistance), and Case No. 2002-04 (Objections to Election).^{1/}

¹ / The background and history of these cases are set forth in the Board's Decision and Order (Opinion No. 1) in this proceeding issued on May 10, 2002.

Prior to the hearing in SHELRB ULP Case No. 2001-03 (hereinafter Donald Pryor Case), SU filed a Motion to Dismiss the unfair labor practice petition. SU asserted that AFSCME's alleged unfair labor practices against SU occurred before the adoption and effective date of the Board's regulations establishing unfair labor practices. Therefore, SU contended, the Board was without authority to enforce the alleged unfair labor practices.

On May 31, 2002, OAH Administrative Law Judge Douglas Koteen issued a Proposed Decision, granting SU's Motion to Dismiss. On June 12, 2002, AFSCME filed a document titled Motion to Revoke Delegation to Office of Administrative Hearings. The Motion requested that the Board revoke its delegation to OAH with respect to the Donald Pryor case (ULP 2001-03), as well as the remaining cases pending before OAH, i.e., ULP 2001-02 (Shared Governance), ULP 2002-01 (Unlawful Assistance), and Case No. 2002-04 (Objections to Election). On June 24, 2002, the Maryland Classified Employees Association (MCEA), a party in these pending cases, filed a response joining AFSCME's request that the Board revoke its delegation to OAH. On June 26, 2002, SU responded in opposition to the Motion to Revoke.

At the Board's request and with the parties' agreement, oral argument was presented on the Motion at the Board's June 27, 2002, meeting. Having considered AFSCME's motion, the responses from MCEA and SU and the parties' oral arguments, for the reasons that follow, the Motion is hereby granted in part and denied in part.

SU's Motion to Dismiss in the Pryor case was filed after the Board had delegated it to OAH. The Board had not previously decided the issue addressed by SU's motion regarding its authority to enforce complaints of alleged unfair labor practices prior to the adoption of regulations. Two of the related cases still pending before OAH involve unfair labor practices that allegedly occurred prior to the Board's adoption of unfair labor practice regulations. It seems virtually certain that OAH will extend Judge Koteen's decision granting SU's Motion to Dismiss to the remaining unfair labor practice cases pending before it.

Board Regulation 14.30.11.03C provides that the Board may revoke "all or part of a delegation to the Office of Administrative Hearings if the case: (1) Involves novel or unanticipated factual or legal issues; (2) Has significant social or fiscal consequences; (3) Involves policy issues of

general applicability; (4) Is likely to have precedential value; or (5) Requires especially expeditious decision." ^{2/}

With respect to the two pending unfair labor practice cases, i.e., ULP 2001-02 (Shared Governance) and ULP 2002-01 (Unlawful Assistance), the Board finds that Judge Koteen's disposition of the Pryor case meets several of the five distinct standards for revoking delegation. Specifically, the question of whether the Board may investigate and find unfair labor practices directly under its statutory authority raises novel and unanticipated legal issues, involves policy issues of broader and general applicability, will have a significant precedential value, and warrants expeditious treatment.

However, Case No. 2002-04 (Objections to Election) does not similarly present a "novel or unanticipated factual or legal issue," nor does it trigger the other criteria. Thus, its delegation to OAH is not revoked. As the Board observed in its previous Decision and Order in this proceeding, the standard for objectionable conduct was expressly and specifically set forth by the Board in its final election order issued on January 16, 2002, prior to the conduct of the election involving these parties. Moreover, the Board finds that the thorough and expeditious disposition of the Objection case will be better served by allowing OAH to proceed to hearing, develop a complete record, and make its findings of fact and proposed conclusions of law as to the numerous disputed allegations underlying the merits of the case. Once the ALJ issues its proposed decision, the Board will conduct a final review of the case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of State, County and Municipal Employees' (AFSCME) Motion to Revoke Delegation to the Office of Administrative Hearings (OAH) is granted in part and denied in part.
2. Based on Board Regulation 14.30.11.03C and D, the Board revokes its delegation of authority to the Office of Administrative Hearings (OAH) in SHELRB ULP Case No. 2001-02 (Shared Governance) and ULP Case No. 2002-01 (Unlawful Assistance).

^{2/} See also, Title 10 of the State Government Article, §10-205(d)(2).

3. The delegation of authority regarding Case No. 2002-04 (Objections to Election) remains undisturbed; OAH shall go forward with making findings of fact and proposed conclusions of law on the merits of that case.
4. Any exceptions by AFSCME (including legal argument on points and authority) to Judge Koteen's Proposed Decision and Order in SHELRB ULP Case No. 2001-03 (Pryor Case) are due within twenty (20) days from June 28, 2002; response by Salisbury University to any exceptions filed by AFSCME is due within fifteen (15) days from the date of service of any exceptions; any reply by AFSCME to any response filed by SU is due within five (5) days of the service of the response.
5. Any Motion to Dismiss SHELRB ULP Case Nos. 2001-02 and ULP Case No. 2002-01 (including legal argument on points and authority) shall be filed no later than twenty (20) days from June 28, 2002; any responses to any motion filed are due within fifteen (15) days from the date of service of the motion; any replies to any response filed are due within five (5) days of the service of the response.
6. Filings not provided for by this Order and/or not filed within the time limits set forth herein will not be accepted by the Board.

BY ORDER OF THE STATE HIGHER EDUCATION LABOR RELATIONS BOARD
Annapolis, MD
July _____, 2002

Jamin B. Raskin, Chairman